



CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112, 1130, and 1232

[Docket No. CPSC-2015-0029]

Safety Standard for Children's Folding Chairs and Stools

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In December 2017, the U.S. Consumer Product Safety Commission (CPSC) issued a consumer product safety standard for children's folding chairs and stools. The standard incorporated by reference the applicable ASTM voluntary standard. The Consumer Product Safety Improvement Act (CPSIA) sets forth a process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard, when a voluntary standards organization revises the standard. Since 2017, ASTM has revised the voluntary standard for children's folding chairs and stools twice. Consistent with the CPSIA update process, this direct final rule updates the mandatory standard for children's folding chairs and stools to incorporate by reference ASTM's 2021 version of the voluntary standard.

DATES: The rule is effective on August 21, 2021, unless we receive significant adverse comment by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. If we receive timely significant adverse comments, we will publish notification in the *Federal Register*, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of August 21, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2015-0029, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (e-mail), except through <https://www.regulations.gov> and as described below. The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7479. Alternatively, as a temporary option during the COVID-19 pandemic, you can email such submissions to: cpsc-os@cpsc.gov.

Instructions: All submissions received must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit electronically confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information please submit it according to the instructions for written submissions.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, and insert the docket number, CPSC-2015-0029, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone: 301-504-6820; email: kwalker@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory Authority

Section 104(b)(1)(B) of the CPSIA, also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires these standards to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

The CPSIA also sets forth a process for updating CPSC’s durable infant or toddler standards when the voluntary standard upon which the CPSC standard was based is changed. Section 104(b)(4)(B) of the CPSIA provides that if an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. In addition, the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

2. ASTM Standard for Children’s Chairs and Stools

On December 15, 2017, the Commission published a final rule issuing a mandatory standard for children’s folding chairs and stools that incorporated by reference the voluntary standard in effect at that time, ASTM F2613-17a, *Standard Consumer Specification for Children’s Chairs and Stools*. 82 FR 59505. The ASTM standard for

children’s folding chairs and stools, ASTM F2613, *Standard Consumer Safety Specification for Children’s Chairs and Stools*, applies to children’s folding chairs and stools with a seat height of 15 inches or less, and equipped with or without a rocking base. These chairs are intended to be used by a single child who can get in and out of the product unassisted. The standard was codified in the Commission’s regulations at 16 CFR part 1232. Since publication of ASTM F2613-17a, the original mandatory standard, ASTM has published two revisions to ASTM F2613. ASTM F2613-19 was approved and published in November 2019. On April 1, 2020, the Commission issued a direct final rule updating the incorporation by reference to ASTM F2613-19 as the mandatory standard. 85 FR 18111. In February 2021, ASTM approved and published ASTM F2613-21. ASTM officially notified the Commission of this revision on February 22, 2021. The rule is incorporating by reference ASTM F2613-21 as the mandatory standard.

B. Revisions to the ASTM Standard

Under section 104(b)(4)(B) of the CPSIA, unless the Commission determines that ASTM’s revision of a voluntary standard that is a CPSC mandatory standard “does not improve the safety of the consumer product covered by the standard,” the revised voluntary standard becomes the new mandatory standard. As discussed below, the Commission determines that the changes made in ASTM F2613-21 are neutral or improve the safety of children’s folding chairs and stools. Therefore, the Commission will allow the revised voluntary standard ASTM F2613-21 to become effective as a mandatory consumer product safety standard under the statute, effective August 21, 2021.

Differences between 16 CFR part 1232 and ASTM F2613-21

In February 2021, ASTM revised ASTM F2613-19. The resulting standard, ASTM F2613-21, includes the following changes:

Substantive change

ASTM F2613-21 makes one substantive change to the standard by updating the definition of stools in the standard to include ottomans. The Commission finds the substantive change made in ASTM F2613-21 to be an improvement to safety as it clarifies the standard's scope to include ottomans, a product previously not clearly subject to the mandatory standard.

Non-substantive changes

Other changes to the standard were minor or editorial in nature as described below.

- Clarification that infant/toddler rockers are not included within the scope of the standard, because infant/toddler rockers are subject to a different voluntary standard, ASTM F3084-20, *Standard Consumer Safety Specification for Infant and Infant/Toddler Rockers*.
- Removal of a previous version of a locking test method that is no longer referenced in ASTM F2613-21. The ASTM F2613-21 standard contains the current latching and locking test method that is similar to a previous version of a locking test method. Although removal of the previous version of the test method was included on an ASTM ballot, when ASTM published F2613-19, the previous locking test method was inadvertently retained in the test method section of the standard. There are no performance requirements associated with the previous locking testing method and the test method is not currently being used for testing products to the standard. Therefore, ASTM F2613-21 removed this unused test method.

The Commission finds that all of the non-substantive changes in ASTM F2613-21 are editorial in nature, and therefore, neutral regarding safety, and thus do not affect the safety of children's folding chairs and stools.

C. Revisions to Parts 1112, 1130, and 1232

CPSC has received an inquiry from a testing laboratory regarding whether 16 CFR part 1232 was intended to apply to non-folding stools, because the title of the Part did not specifically state it applied to “folding chairs and folding stools.” Previous discussions in the preambles of the NPR (80 FR 63155, October 19, 2015) and the final rule (82 FR 59505, December 15, 2017) for the folding chairs and stools standard clearly indicate that folding stools fell within the scope of the mandatory standard. To avoid any misinterpretation regarding the scope of the standard, the Commission is amending the title of the rule to read “Safety standard for children’s folding chairs and children’s folding stools” and the title of the requirements in section 1232.2 to read “Requirements for children’s folding chairs and children’s folding stools” to remove any ambiguity regarding whether the standard applies to children’s folding stools versus non-folding stools. The rule also amends section 1232.1 regarding scope to state it establishes a standard for “children’s folding chairs and children’s folding stools.” For consistency, the rule makes the corresponding amendment to the notice of requirements listed in section 1112.15(b)(43) of 16 CFR Part 1112 to read “16 CFR part 1232, Safety Standard for Children’s Folding Chairs and Children’s Folding Stools”. The rule also makes the corresponding amendment to the definition in section 1130.2(a)(13) of 16 CFR Part 1130 to read “Children’s folding chairs and children’s folding stools.”

D. Incorporation by Reference

Section 1232.2 of the direct final rule incorporates by reference ASTM F2613-21. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to the final rule, ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section A of this preamble summarizes the major provisions of the ASTM F2613-21 standard that the Commission incorporates by reference into 16 CFR part 1232. The standard is reasonably available to interested parties, and interested parties can purchase a copy of ASTM F2613-21 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; phone: 610-832-9585; www.astm.org. Additionally, until the direct final rule takes effect, a read-only copy of ASTM F2613-21 is available for viewing on ASTM's website at: <https://www.astm.org/CPSC.htm>. Once the rule takes effect, a read-only copy of the standard will be available for viewing on the ASTM website at: <https://www.astm.org/READINGLIBRARY/>. Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: 301-504-7479; email: cpsc-os@cpsc.gov.

E. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA are "consumer product safety standards." Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because children's folding chairs and stools are children's products, samples of these products must be tested by a third party conformity assessment body whose

accreditation has been accepted by the Commission. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in section 104(d) of the CPSIA.

F. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSIA, the Commission has previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing children's folding chairs and stools (82 FR 59505, December 15, 2017). The NOR provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing children's folding chairs and stools to 16 CFR part 1232. The NORs for all mandatory standards for durable infant or toddler products are listed in the Commission's rule, "Requirements Pertaining to Third Party Conformity Assessment Bodies," codified at 16 CFR part 1112.

None of the changes to ASTM F2613-21 would impact a CPSC accepted laboratory's competence to be able to conduct testing to the revised standard. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2613-19 to be competent to conduct testing to ASTM F2613-21 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected in the normal course of renewing their accreditation to update the scope of the testing laboratories' accreditation to reflect the revised standard.

G. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds

that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B). The Commission concludes that when the Commission updates a reference to an ASTM standard that the Commission has incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary.

Under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference as a Commission standard for a durable infant or toddler product under section 104(b)(1)(b) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM’s revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC’s standard by operation of law. The Commission is allowing ASTM F2613-21 to become CPSC’s new standard. The purpose of this direct final rule is merely to update the reference in the Code of Federal Regulations (CFR) so that it reflects accurately the version of the standard that takes effect by statute. The rule updates the reference in the CFR, but under the CPSIA, ASTM F2613-21 takes effect as the new CPSC standard for children’s folding chairs and children’s folding stools, even if the Commission did not issue this rule. Additionally, the title and text of Part 1232 is revised to clarify the scope of the standard regarding children’s folding stools, with corresponding revisions to the references in Parts 1112 and 1130 for consistency. Thus, public comment will not impact the substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment are not necessary.

In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgating rules that are noncontroversial and that are not expected to generate

significant adverse comment. *See* 60 FR 43108 (August 18, 1995). ACUS recommended that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because we do not expect any significant adverse comments.

Unless we receive a significant adverse comment within 30 days, the rule will become effective on August 21, 2021. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, including an assertion challenging the rule’s underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change. As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute and corresponding changes to Part 1232 and two other parts for consistency and clarity.

Should the Commission receive a significant adverse comment, the Commission would withdraw this direct final rule. Depending on the comments and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

H. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As explained, the Commission has determined that notice and comment are not necessary for this direct final rule. Thus, the RFA does not apply. We also note the limited nature of this document, which merely updates the incorporation by

reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

I. Paperwork Reduction Act

The standard for children's folding chairs and stools contains information-collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The revisions to the standard made no changes to that section of the standard. Thus, the revisions will have no effect on the information-collection requirements related to the standard.

J. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement where they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

K. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA deems rules issued under that provision to be "consumer product safety standards." Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

L. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standard organization revises a standard upon which a consumer product safety standard was based, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the *Federal Register*. The Commission is taking neither of those actions with respect to the standard for children’s folding chairs and stools. Therefore, ASTM F2613-21 will automatically take effect as the new mandatory standard for children’s folding chairs and stools on August 21, 2021, which is 180 days after the Commission received notice of the revision on February 22, 2021.

M. The Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.” Pursuant to the CRA, this rule does not qualify as a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, the Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

List of Subjects

16 CFR Part 1112

Consumer protection, Incorporation by reference, Third party conformity assessment body requirements, Audit.

16 CFR Part 1130

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

16 CFR Part 1232

Consumer protection, Imports, Incorporation by reference, Infants and children, Law enforcement, Safety, Toys.

For the reasons stated in the preamble, the Commission amends title 16 CFR chapter II as follows:

PART 1112 – REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

1. The authority citation for part 1112 continues to read as follows:

Authority: 15 U.S.C. 2063; Pub. L. 110-314, section 3, 122 Stat. 3016, 3017 (2008).

2. Amend § 1112.15 by revising paragraph (b)(43) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) ***

(43) 16 CFR part 1232, Safety Standard for Children’s Folding Chairs and Children’s Folding Stools.

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PART 1130 – REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

3. The authority citation for part 1130 continues to read as follows:

Authority: 15 U.S.C. 2056a, 2065(b).

4. Amend § 1130.2 by revising paragraph (a)(13) to read as follows:

§ 1130.2 Definitions.

* * * * *

(a) ***

(13) Children's folding chairs and children's folding stools;

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5. Revise part 1232 to read as follows:

**PART 1232 – SAFETY STANDARD FOR CHILDREN'S FOLDING CHAIRS
AND CHILDREN'S FOLDING STOOLS**

Sec.

1232.1 Scope.

1232.2 Requirements for children's folding chairs and children's folding stools.

Authority: Sec. 104, Pub. L. 110-314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec 3, Pub. L. 112-28, 125 Stat. 273.

§ 1232.1 Scope

This part establishes a consumer product safety standard for children's folding chairs and children's folding stools.

§ 1232.2 Requirements for children's folding chairs and children's folding stools.

Each children's folding chair and children's folding stool shall comply with all applicable provisions of ASTM F2613-21, *Standard Consumer Safety Specification for Children's Chairs and Stools*, approved on February 1, 2021. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; phone: 610-832-9585; www.astm.org. A read-only copy of the standard is available for viewing on the ASTM website at <https://www.astm.org/READINGLIBRARY/>. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7479, email: cpsc-os@cpsc.gov, or at the National Archives and Records Administration (NARA). For information on the

availability of this material at NARA, email fedreg.legal@nara.gov, or go to:

www.archives.gov/federal-register/cfr/ibr-locations.html.

Alberta E. Mills, Secretary
U.S. Consumer Product Safety Commission

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